

STATE OF DEAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

FRATERNAL ORDER OF POLICE, LODGE NO. 5,)	
)	
Charging Party,)	
)	
v.)	<u>ULP No. 18-04-1146</u>
)	
NEW CASTLE COUNTY, DELAWARE,)	Probable Cause
)	Determination
Respondent.)	

New Castle County, Delaware (“County”) is a public employer within the meaning of 19 Del.C. §1602(l) of the Police Officers and Firefighters Employment Relations Act, 19 Del.C. Chapter 16 (“POFERA”). The New Castle County Police Department (“NCCPD”) is an agency of the County.

The Fraternal Order of Police (“FOP”) is an employee representative within the meaning of §1602(f) of the POFERA. By and through its affiliated Lodge No. 5, the FOP is the exclusive bargaining representative of police officers employed by the County at and below the rank of Senior Lieutenant. 19 Del.C. §1602(g).

The County and FOP Lodge 5 are parties to a current collective bargaining agreement with a term of April 1, 2015 through March 31, 2019.

On April 30, 2018, FOP Lodge 5 filed an unfair labor practice charge with the Public Employment Relations Board (“PERB”) alleging conduct by the County in violation

of 19 Del.C. §1607(a)(1) and/or (a)(5).¹ FOP Lodge 5 alleges the County has failed or refused to negotiate concerning a change in working conditions which may result in discipline, which the FOP asserts is a mandatory subject of bargaining. The Charge specifically asserts, “On or about March 20, 2018, New Castle County Police instituted a new administrative policy/directive, Appendix 52-B of Directive 5, titled *Brady Disclosure*, describing how New Castle County Police Officers would now be required to comply with reporting requirements placed upon criminal prosecutors in the U.S. Supreme Court decision of *Brady v. Maryland*.”

On May 23, 2018, the County filed its Answer in which it denied most of the factual allegations and all of the legal assertions contained in the Charge. The Answer did not include any new matter.

This probable cause determination is based upon a review of these pleadings.

DISCUSSION

Rule 5.6 of the Rules and Regulations of the Delaware Public Employment

Relations Board provides:

- (a) Upon review of the Complaint, the Answer and the Response the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director’s decision in accord with the

¹ §1607(a). It is an unfair labor practice for a public employer or its designated representative to do any of the following:

- (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
- (5) Refuse to bargain collectively in good faith with an employer representative which is the exclusive representative of employees in an appropriate unit.

provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.

- (b) If the Executive Director determines that an unfair labor practice may have occurred, he shall where possible, issue a decision based upon the pleadings; otherwise, he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

For purposes of reviewing the pleadings to determine whether probable cause exists to support the charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

The pleadings raise both factual and legal issues. To prevail in this matter, FOP Lodge 5 must establish by a preponderance of the evidence that New Castle County has implemented a unilateral change in a mandatory subject of bargaining, without notice to the FOP and/or the opportunity to negotiate, in violation of its statutory duties. A hearing will be promptly scheduled for the purpose of establishing a factual record on which argument can be considered in order to render a determination on this Charge.

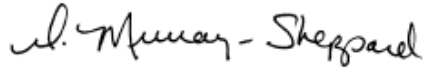
DETERMINATION

Considered in a light most favorable to the Charging Party, the pleadings support a determination that there is probable cause to believe a violation of 19 Del.C. §1607 (a)(1) and/or (a)(5) may have occurred. The pleadings raise questions of fact and law which can only be resolved following submission of a complete evidentiary record and argument.

WHEREFORE, a hearing will be promptly scheduled for the purpose of establishing a factual record upon which a decision can be rendered concerning:

WHETHER NEW CASTLE COUNTY VIOLATED ITS DUTY TO BARGAIN IN
GOOD FAITH AND 19 DEL.C. §1607 (A)(1) AND/OR (A)(5) BY FAILING OR
REFUSING TO NEGOTIATE CONCERNING NEW CASTLE COUNTY
POLICE DIRECTIVE 52, APPENDIX 52-B, PRIOR TO ITS
IMPLEMENTATION?

Dated: June 5, 2018



DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Bd.